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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,927	10/19/2001	Arbab Das	129250-002148/US	5034

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CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC
P.O. BOX 1995
VIENNA, VA 22183

EXAMINER

MARCELO, MELVIN C

ART UNIT	PAPER NUMBER
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2616

MAIL DATE	DELIVERY MODE
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09/26/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/036,927

Applicant(s)

DAS ET AL.

Examiner

Melvin Marcelo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2008.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicants' arguments filed 07-30-2008 have been fully considered but they are not persuasive.

Applicants responded to the new ground of rejection raised by the Board of Patent Appeals and Interferences under 37 C.F.R. §41.50(b) by amending independent claims 1, 14, 15 and 17 to include the limitation "***using a transmitter used to transmit the previous transmission when no confirmation that the information previously transmitted was correctly received***" and by arguing that the retransmissions in *Bolgiano et al.* (US 6,366,568 B1) are multiple transmissions of the same original transmission, rather than the transmission of an original transmission after confirmation that an original transmission has been received correctly or incorrectly.

Applicants' arguments are not persuasive since the Board is only using *Bolgiano* to teach the missing elements from *Kwan et al.* (US 2003/0081692 A1). Specifically, *Kwan* is the main reference which already teaches the newly added limitation "***using a transmitter used to transmit the previous transmission when no confirmation that the information previously transmitted was correctly received***" since their system uses hybrid ARQ (HARQ) (see *Kwan*, paragraphs 0006 and 0146), wherein the transmitter/sender that transmits the original data will retransmit the same data if a negative acknowledgment is received. *Newton's Telecom Dictionary* (9th Edition, 1995) defines ARQ as:

Automatic Retransmission reQuest. The standard method of checking transmitted data, used on virtually all high-speed data communications systems. The sender encodes an error-detection field based on the contents of the message. The receiver recalculates the check field and compares it with that received. If they match, an "ACK" (acknowledgment) is transmitted to the sender. If they don't match, a "NAK" (negative acknowledgment) is returned, and the sender retransmits the message. Note: this

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method of error correction assumes the sender temporarily or permanently stores the data it has sent. Otherwise, it couldn't possibly retransmit the data...

The Board found that the missing element in Kwan was whether "Kwan's specific variable-coding transmission scheme necessarily applies to retransmissions" (BPAI Decision, filed 3-21-2008, page 6). The Board held that Bolgiano taught the missing element in that "*Bolgiano amply teaches varying the number of codes used for retransmissions*" (BPAI Decision, page 10) and concluded that "*combining these [Bolgiano] teachings with those of Kwan would have amply suggested the desirability of varying the number of codes not only for transmissions as in Kwan, but also for retransmissions*" (BPAI Decision, page 10).

Applicants do not dispute the Board's finding that "*Bolgiano amply teaches varying the number of codes used for retransmissions*" (BPAI Decision, page 10); instead, they argue that Bolgiano's retransmission is different from the claimed retransmission (Applicants' response, filed 07-30-2008, page 7). However, the claimed retransmission is not different from the retransmission in Kwan (see above with respect to hybrid ARQ). Both Bolgiano and Kwan teach techniques for the same field of endeavor --retransmission of original data. Thus, a skilled artisan in this field would have been motivated to combine Bolgiano's teachings with Kwan for the reason that both references pertain to retransmission of original data in order to correctly receive the original data.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kwan et al. (US2003/0081692 A1) and Bolgiano et al. (US6,366,568 B1).

Since the new ground of rejection raised by the Board does not reopen prosecution except as to that subject matter to which the new rejection was applied (see MPEP 1214.01 I. Submission of Amendment or New Evidence), the Board's reasoning with regards to the new ground of rejection under 37 C.F.R. §41.50(b) in the decision, filed 03-21-2008) is hereby incorporated by reference. The newly added limitation of "***using a transmitter used to transmit the previous transmission when no confirmation that the information previously transmitted was correctly received***" to independent claims 1, 14, 15 and 17 do not change the Board's ground of rejection since the newly added limitation is clearly taught by Kwan for the reasons indicated above in the response to applicants' arguments.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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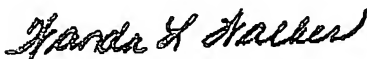
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin Marcelo whose telephone number is 571-272-3125. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Firmin Backer can be reached on 571-272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melvin Marcelo/
Primary Examiner
Art Unit 2616

September 23, 2008



WANDA L. WALKER
DIRECTOR
TECHNOLOGY CENTER 2600